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No. 89-7376

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1990

PEARLY L. WILSON,

Petitioner,

vs.

RICHARD SEITER, et al.,

Respondents.

On Writ Of Certiorari To the United States
Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

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CERTIORARI GRANTED OCTOBER 1, 1990

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RELEVANT DOCKET ENTRIES

Wilson, et al., v. Seiter, et al.

No. C2-86-1046

United States District Court, Southern District of Ohio,
Eastern Division

- 8-28-86 Motion by plaintiffs to proceed in forma pauperis
- 8-28-86 Motion to proceed in forma pauperis granted
- 8-28-86 Complaint, summons issued
- 8-28-86 Amended complaint
- 8-28-86 Petition for appointment of counsel by plaintiffs
- 11-10-86 Plaintiffs' motion for summary judgment
- 4-16-87 Defendants' cross-motion for summary judgment
- 5-18-87 Order granting defendants' cross-motion for summary judgment, judgment for defendants, action dismissed
- 5-18-87 Judgment entered
- 5-26-87 Motion of plaintiff Wilson for reconsideration
- 2-24-88 Order denying plaintiff Wilson's motion for reconsideration
- 3-2-88 Notice of appeal filed by plaintiff

Wilson, et al., v. Seiter, et al.

No. 88-3194

United States Court of Appeals for the Sixth Circuit

- 3-7-88 Appeal docketed
- 1-16-90 Judgment affirmed

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF OHIO, EASTERN DIVISION

Pearly L. Wilson

v.

Richard Seiter, et al.

Case No.
C-2-86-1046
FIRST AMENDED
COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action brought by two inmates at Hocking Correctional Facility at Nelsonville, Ohio (hereinafter HCF) to redress the violations of plaintiff inmates, constitutional rights under color of state law and authority. These violations include the general conditions of confinement, failure to implement an adequate inmates' classification system, failure to install an adequate ventilation system at HCF, failure to install an adequate heating system at HCF, warehousing of inmates, including the plaintiffs, at HCF, in overcrowded dormitories, with mentally ill inmates as well as with severely physically ill inmates while the Plaintiffs have no mental or physical infirmities whatsoever. Defendant's practices violate the Eighth and Fourteenth Amendments to the United States Constitution. Plaintiffs seek appropriate declaratory and injunctive relief to correct these practices and damages to compensate plaintiffs for physical and mental injury.

II. JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C.A. Section 1343 (3) and (4) which give United States

District Courts original jurisdiction in suits brought pursuant to 42 U.S.C. Section 1983 to provide relief for the deprivation of civil rights under the color of state law.

3. Jurisdiction is also conferred on this Court by 28 U.S.C.A. Section 1331, which gives United States District Courts original jurisdiction in suits arising under the Constitution in which the matter in controversy exceeds ten thousand dollars. (\$10,000.00), exclusive of interest and costs. The amount here in controversy, exclusive of interest and costs, exceeds \$10,000.00.

4. Declaratory relief is authorized by 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

III. PARTIES

A. Plaintiffs

5. Plaintiff Pearly L. Wilson was convicted of a felony and now confined at HCF. Plaintiff Everett Hunt, Jr. was convicted of a felony and is now confined at HCF. Both plaintiffs have suffered, and are presently suffering under the conditions described in this action, and attempted to improve these conditions by advising the named defendants who, in turn, delegated their responsibilities to employees under them, (the defendants named herein). The delegated employees could not correct the violations complained of herein.

B. Defendants

6. Richard P. Seiter serves as Director of the Ohio Department of Rehabilitation and Correction. In that

capacity and pursuant to Section 5120.01 of the Ohio Revised Code, all functions and duties of all Managing Officers within the Department are performed under his control and pursuant to rules prescribed by him. He is being sued in his official capacity and in his individual capacity.

7. Carl Humphreys serves as the Managing Officer of the Hocking Correctional Facility, an institution under the Department's jurisdiction. Pursuant to Section 5120.38 of the Revised Code and in that capacity, Defendant Carl Humphreys is responsible for the day-to-day operation of HCF. He is being sued in his official capacity and in his individual capacity.

IV. STATEMENT OF FACTS

8. There are over 300 inmates at HCF, incarcerated for felonies, etc. The original intended maximum capacity was 200. Inmates are now being double-bunked in all three dormitories at HCF.

9. Inmates in "B" and "C" dormitories live with at least 141 and 143 other inmates respectively so that each inmate has less than [sic] 50 square feet of space. Each of the dormitories at HCF are seriously overcrowded. Inmates are subjected to cramped living space and excessive noise levels which create hardships in reading, writing, and studying. No attempt is made to regulate the noise level of fans, heaters in winter months, and dropping of footlocker tops by inmates.

10. Inmates are provided a stand-up locker and a foot locker for their personal possessions. This amount of

space is inadequate for keeping personal possessions; especially for those inmates, such as the Plaintiffs, who are serving lengthy sentences.

11. Inadequate heating in the winter months causes many problems. The "C" Dormitory, for instance, reaches nearly frigid temperatures. The clothing provided is not sufficient to keep the plaintiffs warm during the winter months.

12. Temperatures in summer months are excessively high because of improper ventilation. Inmates have problems with heat-related rashes, and those with respiratory deficiencies have difficulty breathing.

13. In each dormitory, the restrooms (toilets only) are inadequately cleaned and retains germs and offensive odors. The floor to these areas is slippery and always dirty, and not fitted to be anti-skid.

14. In each of the dormitories there are four (4) long sinks with three (3) spigots to each sink. These are used for tooth-brushing, washing, shaving, and washing clothes. These sinks are inadequately cleaned and retains germs and offensive odors. The floor around these areas are slippery and always dirty, and not fitted to be anti-skid.

15. The shower-heads, Fourteen (14) in "C" Dormitory, is the allotted showers for that Dormitory for 143 inmates.

16. There are twelve commodes and four urinals for "C" dormitory. These commodes and urinals are usually dirty and frequent accumulation of water around the urinals and commodes creates offensive odors and germs.

C. Classification

17. Inmates at HCF are classified for either minimum or medium custody pursuant to Rule 5120-9-52 & 53 of the Ohio Administrative Code. Assignment to individual dormitories, however, are based on no criteria or job assignments. Rather than factors like seriousness of the offense, length of sentence, nature of prior criminal conduct or other factors enumerated in Rule 5120-9-52, no criteria is utilized.

D. Dining Room and Food

18. The food services and facilities at HCF are a serious threat to the physical well-being of the plaintiffs as well as all other inmates. Offensive odors are a constant problem due to poor and inadequate ventilation, poor and inadequate sewage drainage, general filth and unsanitary facilities. Inmates working in the dining room are allowed to wipe tables with filthy rags and, this happens during the meals when eaten by the inmates.

Glasses of milk are left open for lengthy periods of time when the meals are served; although the milk dispenser is for the individual inmate to draw his own milk when he walks through the dining room, there is always an inmate assigned to draw the milk during the meals which, the inmate assigned, always draws far too many glasses of milk and leaves same sitting for flies and other insects to mingle or drink from the glasses. These open glasses of milk attract flies, roaches and vermin and, the general filth and unsanitary cleaning in the dining room contribute to patently offensive odors.

19. Inmates serving and preparing meals do not wear hair nets and do not have clean clothes or hands. Often the food itself contains hair, bugs and other foreign objects and is otherwise unsightly.

20. The plaintiffs have been subjected to less favorable living conditions, including less freedom, and, because of the mentally ill and physically ill inmates at HCF, a more dangerous environment and worse prison conditions; have incurred mental and physical stress; have lost property and unwritten seniority rights as a result of being transferred from the Chillicothe Correctional Institute at Chillicothe, Ohio, on May 16, 1983, and have suffered a loss of human dignity.

V. FIRST CAUSE OF ACTION

21. Plaintiffs repeat and reallege paragraphs one through twenty. Forcing the plaintiffs to live under the totality of conditions existing at Hocking Correctional Facility shocks the conscience and sense of decency of this society. These conditions subjects plaintiffs to deprivations and restrictions which bear no reasonable relationship to and are not necessary to the achievement of any legitimate corrective goals. By maintaining such practices and policies under color of state law, Defendants Seiter and Humphreys have violated Plaintiffs' Eighth and Fourteenth Amendment rights to be free from the imposition of cruel and unusual punishment.

VI. SECOND CAUSE OF ACTION
NEED FOR RELIEF

22. The policies and practices described in paragraphs one through twenty of this Amended Complaint have caused and are causing massive violations of basic human rights embodied in the United States Constitution. Plaintiffs have no adequate remedy at law. Plaintiffs are being substantially harmed, irreparably harmed, by the policies and practices of the Defendants. Plaintiffs will continue to be irreparably harmed until relief prayed for below is secured.

VII. DEMAND FOR RELIEF

WHEREFORE, Plaintiffs ask this Honorable Court to:

1. Declare that the actions of Defendants have violated and are violating the Constitutional rights of Plaintiffs Wilson and Hunt.
2. Issue an injunction ordering Defendants to forthwith discontinue the warehousing of mentally and physically ill inmates with the Plaintiffs.
3. Issue an injunction ordering Defendants to forthwith bring living conditions and practices up to constitutional standards, and to decrease the population at HCF to proper capacity, and to provide the Plaintiffs with more than 50 square feet of living space.
4. Award compensatory damages to each of the Plaintiffs in the amount of three hundred thousand dollars (\$300,000.00).

5. Award punitive damages in the amount of six hundred thousand dollars (\$600,000.00) to each Plaintiff in this Action.

6. Grant any other relief in law or equity that is just and proper, including but not limited to costs and reasonable attorney's fees, above and beyond the compensatory and punitive damages demanded as judgment against the named Defendants.

Respectfully submitted,

/s/ Pearly L. Wilson
(PEARLY L. WILSON) #146-097
HOCKING CORRECTIONAL
FACILITY
POST OFFICE BOX 59
NELSONVILLE, OHIO 45764

Pro se.

Respectfully submitted,

/s/ Everett Hunt Jr
(EVERETT HUNT, JR.) #125-268
HOCKING CORRECTIONAL
FACILITY
POST OFFICE BOX 59
NELSONVILLE, OHIO 45764

Pro se.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

AFFIDAVIT SUPPORTING CLAIMS
ALLEGED BY PLAINTIFFS PEARLY
WILSON AND EVERETT HUNT, JR.

I, /s/ Robert L. Cassidy, a citizen of the United States and of legal age, herein make the following statement in support of claims as raised in the lawsuit by the Plaintiffs, Pearly Wilson and Everett Hunt, Jr.

The statement is of my own free will, and of my own knowledge. I am competent to testify thereto.

I am a prisoner, an inmate situated within the State of Ohio, and at the Hocking Correctional Facility at Nelsonville, Ohio. I have been confined therein at that Facility (hereinafter "HCF") since July 1985.

The conditions at HCF, to my own personal knowledge are as follows:

1. The living areas are far too close in proximity to be healthy. Being that the beds are less than three to four feet (3-4) apart.
2. The ventilation is not adequate enough for proper breathing at any time even with the windows open during the summer months.
3. There are two large fans situated at the East and West ends of C-Dormitory, but neither fan, singularly, or collectively, are adequate enough to pull foul air out the dormitory and, therefore, the oxygen within the dormitory is not adequate for breathing at any time. In fact,

during the nights when every one is sleeping, the air turns so foul that it will awaken most of the inmates and in many cases cause these inmates to cough severally because of the lack of adequate ventilation. Body odors are rampant; dormitory cleanliness, and the lack of cleanliness is quite noticeable at all times. The air is stagnant.

4. Living space, such as the two (2) small lockers, is not adequate for those of us inmates who are serving lengthy sentences.

5. The prison officials have had a policy of housing both mentally ill and two physically ill inmates in C-dormitory. Many of the mentally ill inmates have most severe problems. Being caused to (or forced) to live with such prisoners causes stressful situations most times. It can only be deemed a punishment which courts have not imposed upon any particular inmate warehoused at HCF, because some of the mentally ill inmates are psychotic and, for my part, I do not know how to deal with any given situation if one should arise. As I do not know just how an angry psychotic inmate would act and, therefore, I have to stay away from such men in the dormitory at HCF whenever I am approached by one whom I would deem a mentally ill prisoner.

6. It is a policy at HCF that inmates transferred to HCF from another prison are assigned to the food service department without proper physical examinations or blood tests. Many of those inmates have lung diseases; they cough over foods where they are assigned to serve or prepare. Also, other inmates with lung diseases work in the dishwashing area, or the kitchen area even though

they are not assigned to prepare any foodstuffs whatsoever. But such diseased prisoners are not supervised in any capacity where it could safely be said that they are no threat to the other prisoners' health.

7. Cleaning equipment in C-Dormitory is not adequate; nor is the space for storing such equipment sufficient or clean, not with sufficient air to keep the foul odors to a minimum.

8. The noise level, that is, with fans running, and the general inmates' noise during the day or night even when sleeping, is far in excess of a proper level for a peaceful situation; whatwith the coughing of diseased inmates and the fans or heating equipment running.

9. C-Dormitory is a cold dormitory; it has damaged windows; damaged walls and, in many places, cracked walls where one can see right through the wall to the street down below in the Nelsonville populace or city proper; being that that city is situated too close to HCF.

10. In summer months the oxygen is just not there. One must suffer severely hot living quarters at times up to ninety-five (95) degrees temperature. I have been caused to suffer such hot temperatures since I have been confined at HCF, and the small fans, used at the time, were completely inadequate for ventilation.

11. The two (2) large exhaust fans currently situated in the East and West ends of C-Dormitory were not installed therein until July 23rd, and July 24th of 1986. The small stand-up fan was then removed from C-Dormitory on July 25th, 1986 and removed permanently.

12. Inmates are double-bunked at HCF in each dormitory.

13. Clothing for summer and winter months are ragged and inadequate. In fact, they claim not to have any underwear to issue to inmates at HCF.

14. Inmates being discharged from HCF are not provided proper clothing.

15. Inmates are allowed to wipe off tables in the dining room with dirty rags. These rags are so filthy that one with common sense would not permit same to be used for any purpose in the food service areas.

16. Inmates with lung diseases and other physical health problems are assigned to serve milk to other inmates coming into the dining room. Many times the milk sits out for long periods of time. I, too, have been served milk by prisoners with severe lung diseases; I, too, have observed milk sitting out open for long periods of time.

17. The air circulation is completely inadequate in the dining room at HCF during the summer months.

18. Fire exits are kept closed even during the hottest of days or nights, and these exits are locked at *all* times, except for a fire drill, even though there are "crash gates" situated in proper spots and there is not even one threat to security with the fire exits open.

19. I am aware of the pain and penalty for perjury and that any false statement that I make in the within

affidavit will subject me to penalty for perjury under laws of the United States.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Robert L. Cassidy
(AFFIANT)

[Jurat Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

AFFIDAVIT

I, RICHARD GRIFFIN, a citizen of the United States and of legal age, after first being duly cautioned and sworn to my oath, depose and say that I make the following statements in the within affidavit without expectation of gain or compensation of any kind. And that I have personal knowledge of the facts and circumstances regarding the conditions at the Hocking Correctional Facility at Nelsonville, Ohio (hereinafter "HCF"); and that the statement I make are [sic] true and correct and I am competent to testify thereto. I am aware of the pain and penalty for perjury and that I will be prosecuted for any false statement that I make in this affidavit under the laws of the United States. I therefore state that:

1. I am a prisoner confined at HCF, and have been confined at this Facility since May 1986. I am assigned to C-Dormitory.
2. Inmates are mostly double-bunked at HCF. There are at this time twenty-eight (28) single beds in C-Dormitory out of a total of one hundred forty-three (143) beds therein. Inmates in C-Dormitory have less than 50 square feet of space in which to live and manuver [sic].

The dormitory is seriously over-crowded; as the beds are closely situated. In fact, when we are sleeping at night, we can and do smell other inmates' body odors because the air circulation is far below that required as habitable.

3. Inmates at HCF are subjected to not only cramped living quarters, but also, excessive noise levels created by the exhaust fans, and heater circulation fans, and coughing of other inmates caused mostly by the lack of adequate oxygen/air in which to breathe. (Many inmates at HCF have severe lung problems which cause them to cough all during the nights and days.) These noise levels create hardship in reading, writing, studying, sleeping or resting. When the fans are running it is impossible under the circumstances to regulate the noise level.
4. Inadequate heat in winter months causes C-Dormitory to reach near frigid temperatures.
5. The clothing provided to inmates at HCF is not sufficient to keep the men warm during winter months. Many have to stay under their bed covers in order to stay half-warm during the winter months.
6. We inmates are subjected to excessively high temperatures during summer months because of total lack of adequate or proper ventilation even with windows open. During these months numerous inmates have heat-related problems, and those inmates with respiratory problems have difficulty breathing. Some men have fell out because of exposure to excessive heat at HCF, and had to be placed in the prison infirmary for treatment.
7. I/we are housed with many inmates which have severe mental problems.
8. I/we are housed with many inmates at HCF that have severe medical problems such as open sores after major operations. This is because there is insufficient room to keep post-operative inmates in the infirmary, and they

must be returned to their respective dormitories almost immediately after they are returned to HCF from outside hospitals.

9. Inmates with lung diseases and severe respiratory problems are assigned to the Food Service Department without adequate physical examinations or blood tests, prior to being assigned to the food service areas. Many of these inmates are required to serve foods to other inmates and, during service thereof, the men who have these lung problems cough over the foods which they serve to myself and to other inmates as they/we come through the dining room during meals.
10. The urinals on C-Dormitory, and the commodes, because of accumulations of urine around these mentioned offensive odors and germs are created. Insufficient amounts of disinfect and detergents are provided for cleaning, and the procedures for cleaning are inadequate.
11. As a whole the food services and facilities as stated herein are a serious threat to the mental and physical well-being of inmates at HCF.
12. Because of the cracks in walls, and the holes used as prior ventilation outlets at HCF, insects are more than a nuisance [sic] at HCF during the warm weather. I.e., not only mosquitos [sic], but smaller insects and wasps and yellow jackets as well.
13. Windows are damaged to the point that 90 percent of these windows can not be opened nor closed unless the Maintenance Department is called. During rainy days and nights the windows cannot be closed and damp air is

the norm as result of failure to have such windows in operable condition.

14. Inmates assigned to the dining room are allowed to use filthy cloths for washing and wiping tables which inmates eat on. Offensive odors are a constant problem in the entire prison due to poor and inadequate ventilation.

15. Inmates in C-Dormitory have been required to hang wet towels and face cloths at heads of their beds even though there is insufficient ventilation to dry any cloth materials under 8 to 10 hours and, as a result of this requirement, very offensive odors are created not only in and around these areas, but also on the inmates' bodies and the cloth materials.

16. Fire doors are kept closed and locked at all times at HCF as exits from the dormitories even though there are situated at various proper places wire "crash gates" of heavy duty wire which cannot be bent without tools.

17. Floors in C-Dormitory are usually filthy and unhealthy because of the lack of proper cleaning materials and are threats to inmates' health and well-being.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Richard Griffin
(Affiant)

[Jurat Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]
AFFIDAVIT OF PRINCE VINSON

I, Prince Vinson, a citizen of the United States and of legal age, being of sound mind and having personal knowledge of the conditions under which I am at this time being subjected by the prison officials at the Hocking Correctional Facility at Nelsonville, Ohio (hereinafter "HCF") hereby make the following true and correct statements regarding these conditions. However, I make these statements without promise or expectation of monetary gain or other, but with the true intention of attempting to change all or most of these conditions under which I am constantly required to live as a prisoner of the State of Ohio at HCF. I therefore state:

1. I have been confined at HCF since December, 1984.
2. I am seventy-seven (77) years old at this time, and am physically ill.
3. The beds at HCF are far too close to be a healthful situation. We inmates have less than 50 square feet of living space.
4. Being closely situated, the body odors of other men sleeping nearby can be smelled at night because of the almost total lack of ventilation in C-Dormitory during hot or warm weather even though there are now two (2) large fans used for exhaust during those times as well as during winter months.

5. The two large fans, one on each end of C-Dormitory, are totally inadequate for ventilation, singularly or collectively. During the nights, the air turns quite foul and, in most cases, causes inmates to cough severely. Noises of the coughs of inmates keeps most inmates awake during the nights.

6. I am furnished two (2) small lockers in which to keep my personal property. Those lockers are not adequate for me or other inmates who have lengthy sentences. I am serving a lengthy sentence.

7. The prison policy at HCF is that inmates transferred to HCF from other prisons are usually assigned to the Food Service Department without proper examinations or blood tests. Many of these inmates have lung diseases but are assigned to the Food Service Department any way. They cough over the foods where they are assigned to either prepare or serve. Other inmates work in the dish-washing area. These diseased inmates are a serious threat to my health as well as other inmates' health.

8. C-Dormitory is a very cold dormitory during winter months. There are severely damaged windows, walls, and floor space which permits frigid air to enter into the dormitory during winter months. No adequate clothing is furnished inmates.

9. In C-Dormitory, I have been caused to suffer temperatures as high as ninety-five (95) degrees since I have been confined therein. The two large fans were installed in C-Dormitory, as I recall, on or about July 23rd, and July 24th of 1986; one at each end of the dorm.

10. Inmates are double-bunked at HCF in all three dormitories.

11. Inmates working in the dining room at HCF are allowed to use filthy rags for wiping off tables where the inmate population eats.

12. Fire exits are kept closed at all times, and locked, except for fire drills even though there are "crash gates" properly situated to prevent escape. There is no threat to security with the fire exits open during hot or warm weather months.

13. Because of the proximity of the toilets and latrine areas, one can smell the foul odors from urine, etc., even though these areas are cleaned daily.

I am aware of the pain and penalty for perjury. I know that I can and will be prosecuted for any false statement which I make in this Affidavit. The claims I have made in this Affidavit are true and correct and of my own personal knowledge and I am competent to testify thereto. FURTHER AFFIANT SAYETH NAUGHT.

/s/ Prince Vinson
(PRINCE VINSON)

[Jurat Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

AFFIDAVIT OF PAUL BOCK
Inmate Prison Number 183-164

I, PAUL BOCK, a citizen of the United States and of legal age, after first being duly cautioned and sworn to my oath, depose and say that the claims, allegations, and contentions I make in the within affidavit are true and correct and of my own personal knowledge and I am competent to testify thereto. Further, These claims I make are of my own free will and not because of promise of gain or expectation of gain or profit in any manner. I am aware of the pain and penalty for perjury and know that any false statement that I make in this affidavit will subject me to penalties under United States law for perjury. I therefore state:

1. I am a prisoner confined at the Hocking Correctional Facility ("HCF") at Nelsonville, Ohio. I have been confined at HCF since April 17, 1985. I am assigned to C-Dormitory, and have been so assigned to that dorm since I have been at HCF.
2. There are a total of one hundred and [sic] forty-three (143) beds in C-dorm; twenty-eight (28) of these beds are single; the rest are double-bunk beds.
3. We inmates at HCF have less than 50 square feet of space in which to live and maneuver [sic]; the dormitory is seriously overcrowded; and the beds are far too close for healthy living; being that many of the inmates have serious lung diseases and some have mental problems

which are also serious. When we sleep during warm weather we can and do smell other inmates' body odors.

4. We inmates are subjected to not only cramped living spaces, but also excessive noises and the levels of which creat [sic] hardship in reading, writing, studying, as well as sleeping and resting. There is no attempt to regulate the noise, nor has there ever been an attempt to regulate the noise levels which comes from heat and exhaust fans.
5. Inmates are provided with two (2) small lockers at HCF. These lockers are not adequate to store their personal possessions. These lockers are far too small for reasonable living space when one is serving a lengthy sentence. There is no other place at HCF for storing personal possessions.
6. Inadequate heating, to which I have been subjected, during the cold and winter months mostly reach frigid temperatures; I have been caused to suffer seriously due to the dormitory being very cold and damp. Nor are we inmates provided with clothes sufficient to ward off the cold, damp air during winter months.
7. Many of the inmates have to stay under the blankets on their beds in order to stay as warm as possible in the dormitories. Heat is definitely not working in C-dorm except in the center of the dorm by the toilet.
8. I have been exposed to temperatures as high as ninety-five (95) degrees at HCF since I have been confined therein. There has been inmates who have fell out because of heat exhaustion; others have heat rashes, and those with respiratory problems have difficulty just breathing.

9. I/we are housed with inmates who have been returned to HCF with open sores due to serious operations. These inmates are returned to their dormitory because the Inmate Health Clinic is far too small to accomodate [sic] recuperating space for inmates in the Infirmary.
10. Inmates with lung diseases are assigned to the Food Service Department even though they have not had physical examinations or blood tests. These inmates are routinely assigned to serve foods and do all the other job assignments which is called for in the Food Service Department.
11. I/we are housed with inmates who have severe and psychotic problems.
12. Because of the frequent accumulations of urine around the urinals in C-dorm, germs and offensive odors are created. Insufficient amounts of detergent and other cleaning materials are provided, and the procedures for exterminating insects and mice are totally inadequate.
13. Inmates in the work areas of the dining room are permitted to use filthy rags for cleaning tables off.
14. Ventilation in C-dormitory is not adequate; that dorm carries foul air which we inmates are required to breathe.
15. The walls and floors are cracked and frigid air comes right through these walls during winter months. Inmates are required to sleep with their heads toward the windows, where the frigid air comes through.
16. Many inmates are required to use their blankets at the head of their beds in order to stave off the frigid air.

Many times, the air is not only cold, but it is damp as well.

17. Dormitories at HCF *appear* to be a good living area for we prisoners; but the fact is, our health is in jeopardy, being that we are required to live so close to each other and breathe each other's body odors and foul breaths mostly during the nights.
18. Fire exist [sic] are kept closed and locked at all times even though there are "crash gates" situated which will prevent escapes, or access to outside areas.
19. The so-called "Unit Management" at HCF is a total loss of time and does not assist inmates in any manner. In fact, there are no qualified personnel to run Unit Management at HCF or, if there are qualified personnel, they do not assist inmates. Rather, they do more harm to the inmates that [sic] good. No one takes responsibility; no one knows what they should do in any given situation; they always refer an inmate to another department which, when so refered [sic], the inmates gets no results favoring him. Unit Management is a sham and a mockery to inmates.
20. Prison conditions at HCF involves the wanton and unnecessary infliction of physical and mental pain and stress upon myself and many other inmates at HCF. Such punishment is grossly disproportionate with or to the severity of the crimes warranting imprisonment. As I was sent to prison *as* punishment. Not *for* punishment.
21. Not only have prison officials been advised of the conditions which I complain of, they, in fact, have done nothing to alleviate the problems.

22. Unit Management has been asking for *more* beds to be placed in C-dorm. There is unavailable any room for other beds therein. We are grossly overcrowded at this time already. FURTHER AFFIANT SAYETH NAUGHT.

/s/ Paul Bock
(PAUL BOCK)

[Jurat Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

AFFIDAVIT

I, JOSEPH E. KENNEDY, a citizen of the United States and of legal age make the following statements in the within Affidavit without any expectation of compensation or promise of gain in any manner. I have personal knowledge of the facts and circumstances of the conditions at the Hocking Correctional Facility at Nelsonville, Ohio (hereinafter "HCF"); and the statements I make herein are true and correct, and I am competent to testify thereto. I am aware of the pain and penalty for perjury and know that any false statement I make herein will subject me to penalty for perjury under the laws of the United States. I therefore state that:

1. I have been confined at HCF as an Ohio prisoner serving a sentence since April, 1986. I am assigned to C-Dormitory.
2. Inmates are mostly double-bunked at HCF. However, there are, at this time, only twenty-eight (28) single beds in C-Dormitory; the rest of the beds are all double-bunks, all of which total to one hundred and forty-three (143) including the single beds therein.
3. Inmates in C-Dormitory at HCF have less than 50 square feet of space. The dormitory is seriously overcrowded; and the beds are very closely situated so that, when we sleep, we can smell the body odors of those other inmates around us as they too, are sleeping.

4. We inmates at HCF are subjected to cramped living space and excessive noise levels which create hardship in reading, writing, studying, and sleeping or resting. There is no attempt to regulate the noise level and, in fact, because of the exhaust fans, and the heater circulating fans, it is impossible to regulate the noise level in C-Dormitory. Nevertheless, B-Dormitory is also under like circumstances insofar as these conditions are stated herein, because that dorm is almost to the letter exactly like C-Dormitory.

5. Inmates are provided two (2) small lockers for their personal possessions. This amount of space is totally inadequate for keeping possessions, and especially inadequate for inmates who are serving lengthy sentences. There is no storage space elsewhere in HCF for safekeeping of inmates' personal possessions. None is forthcoming; and none will be provided.

6. Inadequate heating in winter months causes C-Dormitory to reach nearly frigid temperatures. The clothing provided inmates at HCF is not sufficient to keep the inmates warm during winter months. Many inmates have to stay under their bed covers in order to stay warm during the winter months.

7. Temperatures in summer months are excessively high because of the lack of proper and adequate ventilation. Inmates have problems with heat rashes, or heat-related rashes, and those with respiratory problems have difficulty breathing. There has been instances where inmates have fell out because of the excessive heat at HCF.

8. I/we are housed with inmates who have severe mental problems; many of whom are, or may be psychotic

and in need of psychiatric and psychological treatment which is not provided at HCF. At least not adequately.

9. I/we are housed with inmates at HCF who when returned from major operations from various outside hospitals, are placed in close proximity with us even though these inmates have open sores, unclean bodies, and cannot be cared for properly in the dormitories. They are released from the Infirmary at HCF because there is a total lack of space for inmates to recover from their serious operations in the Infirmary.

10. Inmates who have serious lung diseases are even assigned to the food service department at HCF. These inmates are not given adequate physical examinations or blood tests prior to being assigned to the food service department. There are many instances that inmates who have serious lung diseases, are assigned to serve foods to inmates coming through the dining room, and those inmates serving food are allowed to stand over such foods and cough right over the foods.

11. Because of the frequent accumulation of urine around the urinals and commodes, offensive odors are created and germs. Insufficient amounts of detergent and disinfect [sic] are provided for cleaning, and the procedures for exterminating bugs and the insects are totally inadequate. As a whole, the food services and facilities as herein stated create a serious threat to the mental and physical well-being of the inmates, including myself at HCF.

12. Inmates assigned to the dining room area are allowed to use filthy rags to clean wastes off the dining

room tables. Offensive odors are a constant problem due to poor and inadequate ventilation.

13. The dishwasher never adequately cleans trays or silverware.

14. Inmates in C-Dormitory have been required to hang wet towels and face cloths at the head of their beds to dry. But, due to the total lack of proper ventilation, these towels and face cloths do not dry under a period of eight (8) to ten (10) hours and, therefore, being required to hang same at heads of beds cause offensive odors not only in the bed areas, but also on inmates' bodies as well at [sic] the cloth materials.

15. Ninety-nine (99) percent of the inmates housed at HCF are well over fifty (50) years old. They are double-bunked just as if they were well under thirty (30) years of age, in similar circumstances.

16. I have been subjected to filthy air in C-Dormitory due to a lack of proper ventilation even with the two (2) huge exhaust fans placed in that Dormitory.

17. Windows in almost every area, and at least ninety (90) percent of those windows are damaged to the point that they can not be completely closed for the winter months, not opened during summer months except by the maintenance department.

18. The walls are cracked and the cold air comes right on through to the dormitory with frigid temperatures.

19. When it rains, if a window is open, it cannot be closed at night and beds are either wet, or damp air is the result.

20. Dormitories at HCF *appear* to be a good living area for prisoners; but the fact is their health is in more jeopardy than one might understand with untrained minds for the purpose of determining what is adequate or proper to be habitable.

21. During warm weather insects are far too many in the dormitories because of the totally opened areas that cannot be closed.

22. Fire exits remain *closed and locked* at all times except when a fire drill is held at HCF, even though there are "crash gates" situated in proper places to prevent escapes or access to other areas outside the dormitories.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Joseph E. Kennedy
(Affiant)

[Jurat Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

AFFIDAVIT OF PEARLY WILSON

I, PEARLY WILSON, a citizen of the United States and of legal age, make the following statement, presenting the material facts, personally known to me and I am competent to testify thereto:

1. I am a prisoner incarcerated at the Hocking Correctional Facility (HCF) at Nelsonville, Ohio. I have been confined at HCF since May 16, 1983.

2. I have been subjected to every inhumane, unconstitutional punishment in violation of the Eighth Amendment to the United States Constitution as set forth in my original Complaint and First Amended Complaint and I therefore incorporate, reallege and restate those same claims as set forth therein. I have suffered both mental and physical pain because of the named defendants' acts, under color of state law, or their failures to act when they had been duly advised and notified that wrongful acts were being heaped upon my person by their employees and themselves as well.

3. I forwarded a letter to Defendant Richard P. Seiter and Defendant Carl Humphreys, which consisted of three (3) pages, complaining of the unconstitutional conditions of confinement to which they, the defendants, were subjecting me to. That letter was dated July 8, 1986. (Exhibit Number 1, attached hereto).

3(a). At no time did Defendant Seiter respond to the complaints listed in my letter dated July 8, 1986, and

forwarded to him by certified letter Number P 678 311 646, received and signed for by Defendant Seiter's receiving agent, R. Campbell on July 14, 1986. (Exhibit Number 2)

3(b). Defendant Humphreys responded by letter dated July 14, 1986; but failed to take any responsible action to alleviate or correct the constitutional violations complained of by me and Plaintiff, Everett Hunt, Jr. Defendant Humphreys referred a copy of my letter to Mr. Freind [sic], HCF Unit Manager, and his staff. Mr. Freind [sic] could not, and did not take any action to alleviate or correct the constitutional violations as complained of, nor did any member of his staff. In fact, neither Mr. Freind [sic] or his staff has any power to correct the violations. (See Exhibit Number 3, certified letter receipt to defendant Humphreys), signed for by Melissa J. Purch, (Defendant Humphrey's receiving agent at HCF).

4. I have suffered mental pain because of the filth to which I have been subjected at HCF in the dining room during mealtimes, such as has been complained of in my original Complaint and Amended Complaint. In fact, It has been impossible for me to go to the dining room three (3) times daily for meals because of the filth to which I have been subjected and the diseased inmates assigned to prepare the foods for feeding to inmate population. I have a fear of contacting a communicable disease from eating such foods, etc. I still suffer mental pain.

5. I have been subjected to, and still being subjected to frigid air in C-dorm at HCF because of inadequate heat in the dorm, and it has been like thus since May 16, 1983. I have suffered mental and physical pain because of the

cold, frigid temperatured air in C-dormitory, and still suffer same at this time during cold weather.

6. George Sideris, #189-358, was taken to an outside hospital from HCF as a result of contacting pneumonia due to the frigid air in C-dorm, on October 27, 1986. He was then returned subsequently; and, again, returned to an outside hospital on November 1, 1986, because of problems with his contracted pneumonia.

7. I have been subjected to very high temperatures at HCF since being incarcerated there and, at times, temperatures as high as ninety-five (95) degrees.

8. I have been, and am still being, warehoused with mentally ill inmates at HCF.

9. Ventilation is totally inadequate for a healthy environment [sic] at HCF, and I have been subjected to that unhealthy environment since May 16, 1983 or thereabouts . . . such as smelling other inmates' body odors; smelling the foul air and odors from men with colostomy bags housed in C-dorm; smelling the foul odors caused by the toilets and urinals situated in C-dorm; being situated far too close to other beds, far too close for a healthful situation; noises coming from heat and exhaust fans in C-dorm; being subjected to so-called "Unit Management" personnel who have no actual qualifications and cannot assist inmates in any manner. Or, if Unit Management personnel are qualified, they refuse or fail to assist inmates; choosing to refer inmates to other departments instead of being able to handle the problems they are faced with by inmates. In fact,

10. Unit Management personnel have requested more beds be placed in C-dorm even though C-dorm is already overcrowded., and,

11. Even though the ventilation is totally inadequate, Unit Management has even requested that cubicles be installed in C-dorm; knowing well that with cubicles installed, the ventilation will be next to zero if not totally zero and unhealthy for the inmates as confined therein, as it has been all along.

12. Even though C-dorm appears to be clean, it is not.

13. We inmates are subjected to insects and dangerous bugs at HCF, such as wasps and yellow jackets; roaches; mice. Extermination is totally inadequate. Mosquitos and spiders are rampant at HCF because of the many, many cracked walls, floors, and open areas of doors, etc., as well as the huge fans used for exhaust in the dormitories, and their open areas, without lubbers.

14. I am aware of the pain and penalty for perjury and that any false statement I make in thia [sic] Affidavit will subject me to penalty for perjury under the laws of the United States Constitution and the statutes thereof.

DATE: __, 19 __

/s/ Pearly Wilson
(Affiant)

[Certificate Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

AFFIDAVIT OF EVERETT HUNT, JR.

I, EVERETT HUNT, JR, a citizen of the United States and of legal age, make the following statement, presenting the material facts, personally known to me and I am competent to testify thereto:

1. I am a prisoner incarcerated at the Hocking Correctional Facility (HCF) at Nelsonville, Ohio. I have been confined at HCF since May 16, 1983.

2. I have been subjected to every inhumane, unconstitutional punishment in violation of the Eighth Amendment to the United States Constitution as set forth in my original Complaint and First Amended Complaint and I therefore incorporate, reallege and restate those same claims as set forth therein. I have suffered both mental and physical pain because of the named defendants' acts, under color of state law, or their failures to act when they had been duly advised and notified that wrongful acts were being heaped upon my person by their employees and themselves as well.

3. I forwarded a letter to Defendant Carl E. Humphreys and Defendant Richard P. Seiter, which consisted of three (3) pages, complaining of the unconstitutional conditions of confinement to which they, the defendants, were subjecting me to. That letter was dated July 13, 1986.

3(a). At no time did Defendant Seiter respond to the complaints listed in my letter dated July 13, 1986.

3(b). Defendant Humphreys responded by letter dated July 15, 1986; but neglected to take any responsible action to alleviate or correct the constitutional violations complained of by me and Plaintiff, Pearly Wilson. Defendant Humphreys referred a copy of my letter to Mr. Friend, HCF Unit Manager, and his staff. Mr. Friend could not, and did not take any action to alleviate or correct the constitutional violations as complained of, nor did any member of his staff. In fact, neither Mr. Friend or his staff has any power to correct the violations.

4. I have suffered mental pain because of the filth to which I have been subjected at HCF in the dining room during mealtimes, such as has been complained of in my original Complaint and Amended Complaint. In fact, it has been impossible for me to go to the dining room three (3) times daily for meals because of the filth to which I have been subjected and the diseased inmates assigned to prepare the food for feeding the inmate population. I have a terrible fear of contacting a communicable disease from eating such food, etc. I still suffer mental pain.

5. I have been subjected to, and still being subjected to frigid air in B-dorm at HCF because of inadequate heat in the dorm, and it has been like this since May 16, 1983. I have suffered mental and physical pain because of the cold, frigid temperatured air in B-dormitory, and still suffer same at this time during cold weather.

6. George Sideris, #189-358, was taken to an outside hospital from HCF as a result of contacting pneumonia due to the frigid air in C-dorm, on October 27, 1986. He was then returned subsequently; and, again, returned to

an outside hospital on November 1, 1986, because of problems with his contracted pneumonia.

7. I have been subjected to very high temperatures at HCF since being confined here and, at times, temperatures as high as ninety-four (94) degrees.

8. I have been, and am still being, warehoused with mentally ill inmates at HCF.

9. Ventilation is totally inadequate for a healthy environment at HCF, and I have been subjected to that unhealthy environment since May 16, 1983 or thereabout . . . such as smelling other inmates' body odors; smelling the foul air and odors from men with colostomy bags housed in B-dorm; smelling the foul odors caused by the toilets and urinals situated in B-dorm; being situated far too close to other beds, far too close for a healthful situation; noises coming from heat and exhaust fans in B-dorm; being subjected to so-called "Unit Management" personnel who have no actual qualifications and cannot assist inmates in any manner. Or, if Unit Management personnel are qualified, they refuse or fail to assist inmates; choosing to refer inmates to other departments instead of being able to handle the problems they are faced with by inmates. In fact,

10. Unit Management personnel have requested more beds be placed in B-dorm even though B-dorm is already overcrowded., and,

11. Even though the ventilation is totally inadequate, Unit Management has even requested that cubicles be installed in B-dorm; knowing well that with cubicles installed, the ventilation will be next to zero if not totally

zero and unhealthy for the inmates as confined therein, as it has been all along.

12. Even though B-dorm appears to be clean, it is not.

13. We inmates are subjected to insects and dangerous bugs at HCF, such as wasps and yellow jackets; roaches; and mice. Extermination is totally inadequate. Mosquitos and spiders are rampant at HCF because of the many, many cracked walls, floors, and open areas of doors, etc., as well as the huge fans used for exhaust in the dormitories, and their open areas, without lubbers.

14. I am aware of the pain and penalty for perjury and that any false statement I make in this Affidavit will subject me to penalty for perjury under the laws of the United States Constitution and the statutes thereof.

DATED: November 6, 1986

/s/ Everett Hunt, Jr.
Affiant

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STATE OF OHIO : SS.
COUNTY OF HOCKING : AFFIDAVIT OF
: HOMER FRIEND

I, Homer Friend, being first duly sworn, hereby state that I have personal knowledge of all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein and that the following is true to the best of my knowledge and belief.

1. I am the Unit Manager at the Hocking Correctional Facility.

2. I have been employed at the Hocking Correctional Facility since 1983 when it was initially opened as a correctional facility.

3. I am personally familiar with the conditions of confinement at HCF since 1983.

4. There are currently 327 inmates at HCF, with 141 and 143 inmates housed in two large dormitories, and 46 housed in the honor dormitory.

5. Because inmates are housed in open dormitories, special measures are taken to keep down the noise level: 1) radios are only permitted with earphones; 2) no televisions are permitted in the dormitory; 3) a special television room is separate from the dormitory; 4) dormitory rules prohibit excessive noise; and 5) guards are instructed to keep down noise.

6. Each inmate is given one foot locker and one wall locker.

7. There have been very few complaints about the amount of storage space, and it appears to be adequate for most inmates.

8. The heaters have been recently serviced, and they are in good working order.

9. The dormitories are adequately heated during the winter.

10. Inmates are not given special winter clothes unless they have jobs which require them to be outside.

11. Inmates are permitted to buy winter clothing to wear such as long underwear.

12. Inmates are given an extra blanket in the winter.

13. Two large exhaust fans have been installed in each dormitory to increase ventilation and keep down the heat in the summer.

14. The majority of windows are in working order, and they are opened in the summer.

15. The restrooms are completely cleaned twice per day, and porters clean them throughout each day as needed.

16. The kitchen area and dining room are cleaned after every meal.

17. There are currently 57 inmates who work in the kitchen and make sure that it is clean and sanitary.

18. The kitchen and dining areas are kept very clean every day.

19. HCF has contracted with an exterminator, Wells Pest Control, and the institution is exterminated twice per month.

20. Inmates who work around food have to wear hats to keep hair out of food, and they are required to wear plastic gloves.

21. Every inmate is given a health screening during his initial reception into the prison system, and inmates are examined when they enter HCF.

22. Since HCF opened in 1983, there have been no outbreaks of contagious diseases.

23. Inmates with mental illness problems are sent out of HCF to either Oakwood Forensic Center or the Techumseh Program at Chillicothe Correctional Institute.

24. Mentally ill inmates are not "warehoused" at HCF.

25. Because there is an older population at HCF, some inmates have age-related health problems.

26. Physically ill inmates are not "warehoused" at HCF, but the Department does place older inmates within the system at HCF for their own safety among other reasons.

/s/ Homer Friend
HOMER FRIEND

[Jurat Omitted In Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STATE OF OHIO : SS.
COUNTY OF HOCKING : AFFIDAVIT OF
: JERRY PATTON

I, Jerry Patton, being first duly sworn, hereby state that I have personal knowledge of all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein, and that the following is true to the best of my knowledge and belief.

1. I am the Health Care Administrator at Hocking Correctional Facility (HCF).

2. All inmates confined at this institution were medically examined upon their reception in the Ohio prison system.

3. The initial medical examination including checking the inmates for contagious diseases such as tuberculosis, hepatitis [sic], etc.

4. Based upon the initial medical screenings of the inmates, I can state that there are no inmates at HCF with active contagious diseases that can be transmitted.

5. There have been no outbreaks of contagious diseases at HCF since it was converted into a prison in 1983.

6. With regard to the food service, inmates and prison employees eat the same food prepared in the same kitchen.

7. The health clinic at HCF has had no cases of food poisoning such as Salmonella or Botulism.

8. When floors are cleaned at HCF, signs are put up to indicate that the floors are wet and to use caution.

9. With regard to heat in the summer, there are no medical records of any inmates being overcome by heat.

10. In the winter, the number of colds and cold-related diseases is no higher than normal for inmates in this age group.

11. I have reviewed the medical file for Pearly Wilson and find that he has only been treated for routine health problems since 1983.

12. Inmate Wilson has complained of cold symptoms on two occasions since 1983, and both times he was treated with over-the-counter medications.

13. I have reviewed the medical file for Everett Hunt, Jr., and find that he has only been treated for routine health problems since 1983.

14. Inmate Hunt has complained of cold symptoms on twelve occasions since 1983, but he only required treatment with over-the-counter medications on every occasion.

Further, affiant sayeth not.

/s/ Jerry Patton
JERRY PATTON

[Jurat Omitted In Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STATE OF OHIO : SS.
COUNTY OF FRANKLIN : AFFIDAVIT OF
: BENNETT MANNING

I, Bennett Manning, being first duly sworn, hereby state that I have personal knowledge of all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein.

1. I am an attorney practicing with a private law firm in Columbus, Ohio.

2. In October, 1986, I was employed as staff counsel for the Ohio Judicial Conference.

3. On October 23, 1986, I toured the Hocking Correctional Facility with Assistant Attorney General Frederick Schoch.

4. I toured the institution to prepare an article for "Judicial Notice", a newsletter distributed to all Ohio judges.

5. Based upon my personal observations of the Hocking Correctional Facility, I prepared the article.

6. A copy of the article which I prepared is attached to this Affidavit.

7. The article has not yet been published in "Judicial Notice".

8. To the best of my knowledge and belief, the article gives a true and accurate account of what I observed in my tour of Hocking Correctional Facility.

Further affiant sayeth not.

/s/ Bennett Manning
BENNETT MANNING

[Jurat Omitted In Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOCKING CORRECTIONAL FACILITY TOUR

By: Bennett A. Manning

Last week I had the opportunity to tour the Hocking Correctional Facility at Nelsonville, Ohio. The facility, a former tuberculosis hospital built in 1956 and converted to a medium security prison in 1980, houses about 300 male inmates in three "dorms" or floors. I was the guest of a lawyer from the Ohio Attorney General's Office investigating a complaint filed by one of the inmates dealing with "conditions" existing at the facility.

All visitors must empty their pockets and walk through a metal detector before being admitted to the prison. The contents of all visitors' pockets are inspected. (I had a cassette tape in my coat pocket, and the guards refused to let me take it inside the prison. "What would you want to smuggle a tape in for?" one asked me. The tape was returned after the tour. I don't know if they played it or not; if they did, they heard Rickie Lee Jones' first album and some cuts from the Broadway musical "New York, New York.")

The prison itself seemed reasonably secure - the locks were large and the wire mesh heavy on all gates, and the facility was surrounded by twelve foot wire mesh fences laced with a high-tech version of barbed wire called "razor wire." I looked at the stuff pretty closely, and those barbs really are like razor blades. Our guide told us that once someone gets entangled in the stuff they have to be cut out or the situation just gets worse. There

have only been three escapes from Hocking Correctional since the facility opened: one inmate escaped in a laundry truck and two more placed blankets over the razor wire and climbed a fence before the fences were raised from eight to twelve feet.

Once inside, I was immediately struck by how clean the facility was and by how much freedom the inmates had within the facility. The first room we were shown was the prison visitation room, which exhibited both of these features. Far from the wire cages, bulletproof glass and tiny windows I expected, the visitation room was an open area that looked like a snack lounge at a high school or (not surprisingly) a hospital. The door to the room was open and inmates appeared to be free to associate with visitors and each other once inside. There were vending machines along one wall and a number of card-table-sized tables. The wall opposite the vending machines featured large windows which overlooked a small courtyard. Four people (an inmate and his visitors, I presume) were using one of the tables to play cards. The tile floor was aging but spotless.

Speaking of age, the average age of an inmate at Hocking Correctional is 45 years old. Eligibility to be placed in a medium security facility such as Hocking is based on a rating system which assigns point values to certain prisoner attributes such as age, prior record, whether the prisoner is likely to commit further offenses, and so forth. Prisoners whose point totals are in a certain range are declared to be "medium security" material. Our guide was unable to tell me what kinds of crimes Hocking inmates had committed, but the lawyer from the

attorney general's office recognized one individual whom he knew had been found guilty of embezzling.

The dorms where the inmates sleep are nothing more than huge rooms with long rows of bunk beds placed about three feet apart. Each inmate gets two "lockers" to stow personal possessions; one is a trunk placed near the foot of each bunk and the other is a more conventional high-school type locker, except much shorter – about three feet high. Inmates are permitted to have radios with earphones in the dorm area, but not televisions. Sink, toilet and shower facilities are located along one wall of each dorm. A three foot half-wall separates the shower/restroom area from the sleeping area. Again, everything was very clean and well kept up.

Inmates are awakened each day by a buzzer at 6:00 AM. The buzzer also sounds at several predetermined intervals throughout the day for "count." Inmates must report to their bunks at these times so prison officials can keep track of them. Otherwise, the inmates are left to their own devices. Activities include watching T.V. (yes, they have cable – with HBO), taking exercise in the gym or yard, using the pool (as in billiards, not swimming) and weight room and reading in the prison library. About 100 Hocking inmates are involved in continuing education classes supervised by a prison director of education.

These and other privileges available to the inmates are used as "carrots" to keep them on their best behavior. This incentive system is useful because it makes inmates feel like there's something in it for them if they obey the rules and don't cause trouble. Before a privilege is taken away, the inmate involved may request a "trial" held

before three prison officials at which each side is allowed to present its case. There are five "solitary confinement" cells for severe discipline problems.

A recent innovation at Hocking is a so-called "unit management" system, designed to help solve inmate problems and deal with inmate complaints at an individual instead of an institutional level. Each dorm is staffed with three professionals, including a case manager (social worker) and a prison official. These professionals are available to consult with inmates, without appointment, for about twelve hours every day, including Saturday and Sunday. Inmates are encouraged to bring all kinds of problems to the unit staff, whether of a personal or institutional nature. The idea is to provide immediate attention to inmate concerns, thus preventing little problems from smoldering until they become big ones. Previously, inmates with problems had to file a complaint or make an appointment which might not bring results for days or weeks.

For example, under the old system, one inmate complained that his shoes didn't fit properly. It took a week to go through the proper channels and get a pair of shoes that fit. That might not seem like a big problem, our guide told us, "but if you were given a pair of shoes that didn't fit, you'd be pretty mad; and if you had to wait a week to get shoes that did fit, you'd be pretty mad about that, too." Under unit management, these types of problems will in theory be remedied more quickly. (Often, things that aren't perceived as big problems by the prison staff *are* big problems to the inmates.)

Prison officials told us that unit management, which has been used successfully in the federal prison system for years, has been initially almost too successful at Hocking; inmates, they said, "are in there [the unit management office] all the time" to lodge trivial or insignificant complaints. Officials hope that the number of complaints will decrease once the novelty of the new system wears off.

What trip to a prison would be complete without sampling the food? We stayed for lunch, which is the big meal of the day. For 85¢, we got chicken fried steak (a 1/4" piece of meat (beef, I think) dipped in batter and fried in chicken fat; it tasted terrible), mashed potatoes with gravy (OK as instant potatoes go), cooked cabbage (I didn't eat any, but it looked alright), three bean salad (out of a can, tasted fine), two slices of bread with butter, vanilla pudding (very tasty) and coffee or milk. The portions were more than generous. A restaurant critic would have panned the meal so fast it wouldn't have time to cool off, but this isn't the Maisonette . . . or even Howard Johnson's, for that matter. Put it this way: you could survive on the food, but I wouldn't try to get locked up so I could eat it on a regular basis.

What does all this have to do with Ohio judges. Just this: Since the Revised Code usually allows broad discretion in sentencing guilty defendants, it is important to know what kind of facility you are sentencing defendants to. Only then can available discretion be used most effectively. Judges should therefore strive to become familiar with the various detention facilities both within their jurisdiction and around the state. Further, this familiarity should be renewed on a regular basis, because conditions

and facilities change. (For example, within the next year Hocking Correctional will be expanding to accommodate more inmates and will receive a new heating system.)

Of course, this is not meant to imply that you ought to knock two years off (or add two years to) a sentence based on the quality of the food served at a particular institution, or that conditions at some or all of our prisons violate constitutional prohibitions against cruel and unusual punishment, but knowledge of prison conditions could be helpful in a number of sentencing situations. For example, if you are considering granting a motion for shock probation with respect to a particular defendant, it would be helpful to know what kind of "prison experience" the defendant will be subjected to prior to release. Youthful or older offenders may be better suited to some types of prison environments than others. Some detention facilities are more secure, or have better medical facilities, or are cleaner, or more crowded, or better staffed, or more accommodating to visitors than others.

In other words, it behooves any responsible judge to have at least some idea about the type of confinement to which he or she is sentencing people. Most prison officials will gladly permit you to inspect their facilities if given proper notice. These opportunities should not be wasted.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

OPINION AND ORDER

Plaintiffs, Pearly Wilson and Everett Hunt, Jr., are prisoners at the Hocking Correctional Facility (HCF). They bring this action pursuant to 42 U.S.C. §1983 claiming that the conditions of confinement at HCF deny them their constitutional rights in violation of the Eighth and the Fourteenth Amendments to the United States Constitution. This matter is before the Court on defendants' motion for summary judgment.

Plaintiffs allege cruel and unusual punishment due to

the general conditions of confinement, failure to implement an adequate inmates' classification system, failure to install an adequate ventilation system at HCF, failure to install an adequate heating system at HCF, warehousing of inmates, including the plaintiffs, at HCF, in overcrowded dormitories, with mentally ill inmates as well as with severely physically ill inmates while the Plaintiffs have no mental or physical infirmities whatsoever.

(Amended Complaint). Specifically, plaintiffs claim that they are housed in an overcrowded facility with inadequate space for storage of personal possessions, inadequate heating in the winter, improper ventilation all year, and unsanitary restroom, shower and sink areas. Plaintiffs allege that no criteria is utilized in assigning inmates to dormitories. Plaintiffs claim that the food services and

facilities are health hazards due to inadequate ventilation, sewage drainage, improper maintenance procedures, and unsanitary practices and procedures.

Plaintiffs claim that as a result of being subjected to such conditions of confinement they have and do suffer both mental and physical stress and have lost unwritten seniority rights.

Defendants move for summary judgment on the ground that plaintiffs are provided with the minimal civilized measure of life's necessities as required by *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Defendants offer as support for their motion the affidavits of Homer Friend, Unit Manager at HCF, Jerry Patton, Health Care Administrator at HCF, and Bennett Manning, staff counsel for the Ohio Judicial Conference.

Federal Rule of Civil Procedure 56(c) provides:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

"[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 54 U.S.L.W. 4755, 4757 (June 25, 1986) (No. 84-1602) (emphasis in original); *Kendall v. The Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984).

The purpose of the procedure is not to resolve factual issues, but to determine if there are genuine issues of fact to be tried. *Lashlee v. Sumner*, 570 F.2d 107, 111 (6th Cir. 1978). Therefore, summary judgment will be granted "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial, . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broadcasting Systems, Inc.*, 368 U.S. 464, 467 (1962); accord, *County of Oakland v. City of Berkley*, 742 F.2d 289, 297 (6th Cir. 1984).

In a motion for summary judgment the moving party bears the "burden of showing the absence of a genuine issue as to any material fact, and for these purposes, the [evidence submitted] must be viewed in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970) (footnote omitted); accord, *Adams v. Union Carbide Corp.*, 737 F.2d 1453, 1455-56 (6th Cir. 1984), cert. denied, 469 U.S. 1062, (1985).

As we noted in our Order of February 20, 1987, the Eighth Amendment prohibits cruel and unusual [sic] punishment. "The Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency . . . We have held repugnant to the Eighth Amendment punishments which are incompatible with 'the evolving society.'" *Estelle v. Gamble*, 429 U.S. 97, 102; see, *Rhodes v. Chapman*, 452 U.S., at 346 (1981); *Grubbs v. Bradley*, 552 F. Supp. 1052, 1120 (M.D. Tenn. 1982). The Eighth Amendment requires that a State furnish inmates with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety. See, *Newman v.*

Alabama, 559 F.2d 283, 291 (5th Cir. 1977), *cert. denied*, 438 U.S. 915 (1978); *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); *Grubbs v. Bradley*, 552 F.Supp., at 1122. Conditions of confinement must be contrary to "evolving standards of decency" before they violate the Eighth Amendment. *Trop v. Dulles*, 356 U.S. 86, 101 (1957)(plurality opinion). Although "conditions which standing alone would not be cruel or unusual, might become so when viewed in the context of the total prison environment," it remains the case that "unless there are conditions that, considered either alone or in combination, specifically amount to cruel and unusual punishment, there can be no Eighth Amendment violation." *Grubbs v. Bradley*, 552 F.Supp. at 1122. Eighth Amendment requirements are met if prisoners are provided with a minimal civilized measure of life's necessities. *Rhodes v. Chapman*, 452 U.S., at 347. "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause . . ." *Whitley v. Albers*, 54 U.S.L.W. 4236, 4239 (U.S. March 4, 1986) (No. 84-1077).

With this standard in mind, and after a thorough review of the record presented to the Court, including the affidavits of Homer Friend, Bennett Manning, and Jerry Patton, we HOLD that the conditions of which plaintiffs complain do not amount to cruel and unusual punishment. These conditions exhibit no obduracy or wantonness on the part of prison officials.

The Constitution does not mandate comfortable prisons. *Rhodes v. Chapman*, 452 U.S., at 349. "So long as prison officials provide inmates with 'a minimal civilized measure of life's necessities', the requirements of the

Eighth Amendment have been met." *Bellamy v. Bradley*, 729 F.2d 416, 420 (6th Cir. 1984) (quoting, *Rhodes v. Chapman*, 452 U.S., at 347).

Regarding the lack of a classification system in assigning inmates to dormitories, a prison's internal security is a matter normally left to the discretion of prison administrators. *Rhodes v. Chapman*, 452 U.S., at n. 14. See also, *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Although plaintiffs complain that there are mentally ill inmates housed with them, prisons house persons convicted of serious crimes and "[t]o the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." *Rhodes v. Chapman*, 452 U.S., at 347. Plaintiffs present no evidence that these circumstances inflict wanton pain upon plaintiffs or that such conditions are grossly disproportionate to the severity of the crimes warranting plaintiffs' imprisonment. *Id.*, at 348.

In addition, defendants present affidavits which indicate that mentally ill inmates are sent to either the Oakwood Forensic Center or to the Tecumseh Program at the Chillicothe Correctional Institute.

As to plaintiffs' complaint that they are housed with severely physically-ill inmates, defendants present affidavits which state that there are no HCF inmates with active contagious diseases. In fact, there have been no outbreaks of contagious diseases at HCF since it was converted into a prison in 1983. Plaintiffs do not complain that they have contracted any such disease.

Defendants present affidavits tending to show that the restrooms are cleaned at least twice a day and precautions are taken to keep the facilities and food in as sanitary a condition as possible. It must be remembered that HCF houses 327 inmates. Measures are taken to keep noise levels to a minimum; heaters have been recently serviced and are in good working order; exhaust fans have been installed in each dormitory and most windows can be opened; kitchens and dining areas are cleaned after every meal and those who work around food are required to wear hats and gloves; HCF contracts with an exterminator to keep the institution free of vermin. Consequently, it is clear that prison officials take steps to keep HCF as clean and sanitary as possible.

Plaintiffs allege that the dormitories are overcrowded. There are two dormitories ("huge rooms with two rows of bunks about three feet apart") housing 141 and 143 inmates. However, the inmates are not confined to the dormitories during the day. Recreational facilities and a TV room are available to dormitory inmates. Although crowded (plaintiffs allege each inmate has less than 50 square feet of space), plaintiffs have not countered defendants' affidavits with evidence which would support their claim that conditions in the dormitories amount to cruel and unusual punishment.

As for the issue of inadequate personal storage space, plaintiff Wilson has previously litigated this issue in this Court and was denied relief. *See, Wilson v. Seiter*, No. C-2-83-2311 (S.D. Ohio August 17, 1984), *aff'd.*, (6th Cir. March 7, 1985). Consequently, the Court need not discuss this claim.

In sum, the Court HOLDS that plaintiffs have been provided with at least the minimal civilized measure of life's necessities and have not been deprived of their Eighth Amendment right to be free from cruel and unusual punishment. We HOLD that HCF officials do not demonstrate obdurate or wanton behavior regarding the conditions of HCF.

Defendants' motion for summary judgment is hereby GRANTED. This action is DISMISSED.

The Clerk of Court shall enter judgment for defendants.

/s/ James L. Graham
James L. Graham, Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

[Captioned Omitted In Printing]

JUDGMENT IN A CIVIL CASE

CASE NUMBER: C-2-86-1046

* * *

x **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED defendants motion for summary judgment is **GRANTED**, this action is **DISMISSED**, JUDGMENT is for the defendants.

May 18, 1987
Date

KENNETH J. MURPHY
Clerk

/s/ Beverly J. Robinson
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Caption Omitted In Printing]

Civil Action C-2-86-1046

ORDER

Plaintiff's May 26, 1987 motion for reconsideration is DENIED. In issuing the May 18, 1987 Opinion and Order dismissing this case the Court considered the affidavits of Pearly Wilson, Everett Hunt, Jr., Robert L. Cassidy, Prince Vinson, Richard Griffin, Paul Bock, and Joseph E. Kennedy attached to plaintiff's November 10, 1986 motion for summary judgment. These affidavits do not, when considered with the March 16, 1987 affidavit of Jerry Patton and the March 16, 1987 affidavit of Bennett Manning, create any conflict of material fact requiring trial. Although plaintiffs' affidavit conclusorily asserts that severely mentally ill and physically ill inmates are present at HCF, they filed no affidavits to rebut Mr. Patton's sworn statement that severely mentally ill inmates receive treatment outside the institution, inmates are treated for physical illness, and that there have been no outbreaks of contagious diseases since the prison opened. Plaintiffs similarly failed to offer fact specific affidavits or other evidence to rebut defendants' affidavits concerning food, sanitation, noise, heat and other conditions at the prison.

/s/ James L. Graham,
James L. Graham, Judge
United States District Judge

No. 88-3194
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PEARLY WILSON, et al.,)	
<i>Plaintiffs-Appellants,</i>)	ON APPEAL
v.)	from the United
)	States District
RICHARD SEITER, ET AL.,)	Court for the
<i>Defendants-Appellees.</i>)	Southern
)	District of Ohio
)	

Decided and Filed January 16, 1990

Before KRUPANSKY and WELLFORD, Circuit Judges, and HARVEY, Senior District Judge.*

HARVEY, Senior District Judge. Appellants are inmates at Hocking Correctional Facility (HCF), a medium security prison located in Nelsonville, Ohio. On August 28, 1986, appellants filed a complaint in the United States District Court for the Southern District of Ohio, claiming violations of the cruel and unusual punishments clause of the eighth amendment of the United States Constitution. The claimed violations arose from

*Honorable James Harvey, United States Senior District Judge for the Eastern District of Michigan, sitting by designation.

allegedly unfit confinement conditions; specifically overcrowding, excessive noise, inadequate storage, inadequate heating and cooling, unclean lavatories, improper classification of prisoners, and unsanitary eating conditions.

On cross-motions for summary judgment, appellants and appellees filed affidavits in support of their respective positions. Appellants' affidavits, and those of five additional inmates, essentially recite the alleged conditions of confinement as depriving them of their eighth amendment rights. Moreover, the affidavits of inmates Bock, Wilson, and Hunt contend that they contacted prison officials regarding the pertinent conditions, but that the officials took no action in response thereto.

Appellees' affidavits, filed both in response to appellants' summary judgment motion and in support of their own summary judgment motion, basically disclose efforts taken by prison personnel regarding physical and medical conditions within HCF, and partially refute the appellants' specific claims concerning conditions at the prison. Additionally, appellees filed the affidavit of the staff counsel for the Ohio Judicial Conference, containing an article recounting his observations following a tour of the facility, respecting conditions at HCF.

In granting appellees' motion, the district court initially found that the eighth amendment requires states to furnish inmates with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety. Next, the district court noted that appellants, in order to prove an eighth amendment violation arising from conditions of

confinement, must demonstrate "obduracy and wantonness, not inadvertence or error in good faith" on the part of the prison officials. *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

Reviewing all of the affidavits in light of these standards, the district court concluded that appellants failed to establish a genuine issue of material fact, and that judgment should properly enter in appellees' favor as a matter of law. Briefly, the trial court concluded that the complained-of conditions exhibited no obduracy or wantonness on the appellees' parts. Furthermore, the district court examined each complained-of condition discretely, and in several instances found appellants' claims meritless given appellees' affidavits. Particularly, the district court dismissed averments in appellants' supporting affidavits concerning confinement with physically-ill inmates, cleanliness of lavatories, noise levels, heating and cooling, ventilation, eating conditions, and general sanitation on the strength of contrary information contained in appellees' affidavits.

Appellants now contend that the district court improperly granted the appellees' summary judgment motion, in that genuine issues of material fact exist concerning confinement conditions, and that therefore the district court could not, as a matter of law, enter judgment.

I.

District courts may enter summary judgment in a movant's favor upon a showing that "there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant need not, however, "support its motion with affidavits or other similar materials *negating* the opponent's claim." *Id.* (emphasis in original).

"As to materiality, the substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Once materiality of a fact is established, district courts must determine whether a genuine issue regarding that fact exists in the record. In order to demonstrate the genuineness of any issue of material fact, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to [that] material fact[]." *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Thus, "[i]f the evidence [regarding existence of a genuine issue of material fact] is merely colorable, . . . , or is not significantly probative, . . . , summary judgment may be granted." *Anderson*, 477 U.S. at 249-250. Finally, "[o]n summary judgment the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." *Matsushita*, 475 U.S. at 587, quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

II.

Appellants argue that genuine issues of material fact remain regarding confinement conditions at HFC [sic], urging that the district court improperly weighed the affidavits of appellees against those of appellants in concluding that the confinement conditions did not violate appellants' eighth amendment rights. Clearly, confinement conditions are material given the substantive law surrounding eighth amendment prisoner claims. See *Rhodes v. Chapman*, 452 U.S. 337, 347 (1982). Moreover, appellants' affidavits are more than colorable, and obviously place the conditions surrounding confinement in issue. Several circuits have found eighth amendment violations arising from conditions similar to those alleged by the appellants. See, e.g., *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), cert. denied, 479 U.S. 317 (1986); *Cody v. Hillard*, 799 F.2d 447, Reh'g granted (en banc), 804 F.2d 440 (8th Cir. 1986); *Hoptowit v. Spellman*, 753 F.2d 779 (9th Cir. 1985). To the extent, therefore, that the district court adopted the findings in appellees' affidavits in concluding that the HFC's [sic] confinement conditions did not deprive appellants of their eighth amendment rights, the district court committed error. As stated in *Anderson*, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." 477 U.S. at 249.

III.

Nevertheless, the appellants' affidavits, even if unopposed, may be insufficient to support a claimed eighth

amendment violation. We are able to identify eight specific conditions that appellants assert amount to infliction of cruel and unusual punishment: (1) unsanitary eating conditions; (2) inadequate heating and cooling; (3) housing with mentally ill inmates; (4) housing with physically ill inmates; (5) inadequate ventilation; (6) excessive noise; (7) insect infestation; and (8) overcrowding. Since appellees' affidavits refute, to some degree, appellants' claims concerning these conditions, genuine issues of fact exist regarding same. Our task, then, is to determine whether these issues are material, requiring an examination of the substantive law regarding eighth amendment confinement conditions claims.

Rhodes, supra, sets forth a flexible standard for ascertaining whether prison conditions amount to cruel and unusual punishment. In evaluating prison conditions, we recognize that the eighth amendment "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." *Id.* at 346, (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)). Thus, "[c]onditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." *Id.* at 347. Yet, "conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional," and "[t]o the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." *Id.*

Subsequent to *Rhodes*, this circuit had interpreted its language as requiring an examination of "all the prison's

conditions and circumstances, rather than isolated conditions and events, when addressing eighth amendment claims." *Walker v. Mintzes*, 771 F.2d 920, 925 (6th Cir. 1985). Moreover, "[i]n certain extreme circumstances the totality itself may amount to an eighth amendment violation, but there still must exist a specific condition on which to base the eighth amendment claim." *Id.* Specific conditions found to violate the eighth amendment include the denial of adequate access to shower facilities, *Preston v. Thompson*, 589 F.2d 300 (7th Cir. 1978); denial of medical treatment, *Estelle v. Gamble*, 429 U.S. 97 (1976); overcrowding, *Cody v. Hillard*, 799 F.2d 447 (8th Cir. 1986); threats to safety, *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986); vermin infestation, *Hoptowii v. Spellman*, 753 F.2d 779 (9th Cir. 1985); inadequate lighting, *id.*; inadequate ventilation, *id.*, unsanitary eating conditions, *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); and housing of inmates with known dangerous individuals, *Shrader v. White*, 761 F.2d 975 (4th Cir. 1985).

Application of this precedent to the appellants' allegations leads us to conclude that some, but not all, of the complained-of conditions suggest the type of "seriously inadequate and indecent surroundings" necessary to establish an eighth amendment violation. See *Birrell v. Brown*, 867 F.2d 956, 958 (6th Cir. 1989). Concerning, however, appellants' claims regarding inadequate cooling, housing with mentally ill inmates, and overcrowding, we believe that these allegations, even if true, fail to establish constitutionally violative conditions.

First appellants suggest that their exposure during summer months to temperatures as high as 95 degrees

represents cruel and unusual punishment. Undeniably, excessive exposure to heat may in some instances constitute cruel and unusual punishment, yet we are unaware of any precedent holding that occasional exposure to 95 degree heat presents such an instance. We therefore reject this specific condition as a basis for appellants' claim.

Second, appellants contend that appellees' practice of housing mentally ill inmates in their dorm places them in fear for their safety. Appellants do not, though, cite any particular episodes of violence supporting this fear. In *Shrader, supra*, the court accepted a magistrate's finding that

[o]ne key to understanding when the risk of violence reaches constitutional dimensions is its effect on the inmate population. . . . In this context, it is not necessary that an inmate establish that he has been the subject of an actual attack, but he must establish that he lives in *reasonable* fear of assaults from other inmates . . . and that the fear results in significant mental pain. . . .

761 F.2d at 978, 979 (emphasis added). The appellants present solely subjective feelings as a basis for their alleged fear of violence from mentally ill inmates. While *Shrader* does not mandate that a prisoner, to establish an eighth amendment violation, demonstrate that he has been the victim of an actual attack, it does require *reasonable* fear. The absence of allegations of prior physical violence involving any inmate supporting appellants' claims leads us to conclude that their fear is not reasonable. Their eighth amendment claim cannot therefore rest on allegations of improper housing of mentally ill inmates.

Finally, on the issue of overcrowding, appellants cite to the fact that inmates are double-bunked, and that each receives approximately 50 square feet of living space within the dorm. While overcrowding is generally acknowledged as a potential basis for an eighth amendment violation, courts examining this problem review all of the circumstances surrounding confinement to ascertain whether prison population density inflicts cruel and unusual punishment. See *Rhodes*, 452 U.S. at 348-49; *Cody*, 799 F.2d at 449-50; *French*, 777 F.2d at 1252. If conditions impacting upon the quality of confinement exacerbate an already overcrowded condition, cruel and unusual punishment may exist. The record before us, undisputed by appellants, establishes that while the inmates may indeed have only 50 or so square feet of living space each within their dorm, the inmates also have access during the day to a television lounge, gymnasium, yard, weight room, billiards table, and library. This is not, therefore, a situation wherein the inmates allege constant exposure to overcrowding. We therefore reject any eighth amendment claim on this basis.

Having found that appellants' claims cannot arise from specific conditions of inadequate cooling, housing with mentally ill inmates, and overcrowding, we now examine whether the remaining conditions alleged are adequate to sustain the appellants' claim.

IV.

Appellees argue that even if appellants allege conditions adequate to support an eighth amendment claim, their affidavits fail to refute the evidence contained in

appellees' affidavits of conscious efforts taken by prison officials concerning the relevant conditions. Since the Supreme Court, in *Whitley v. Albers*, *supra*, has directed that "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause," 475 U.S. at 319, appellees urge that the absence of facts rebutting evidence indicating efforts taken to assure minimally decent confinement conditions demonstrates an absence of any genuine issue as to this material fact.

Initially, it is noteworthy that we have applied *Whitley's* "obduracy and wantonness" standard to eighth amendment challenges to confinement conditions. In *Birrell v. Brown*, 867 F.2d 956 (6th Cir. 1989), we noted that "[i]n addition to producing evidence of seriously inadequate and indecent surroundings, a plaintiff must also establish that the conditions are the result of recklessness by prison officials and not mere negligence or oversight." *Id.* at 958. The importance of this application of *Whitley* may be merely semantic, yet it establishes that at least in this circuit, the *Whitley* standard is not confined to the facts of that case; that is, to suits alleging use of excessive force in an effort to restore prison order.

Having concluded that a showing of obduracy and wantonness is material to appellants' claims, the critical, and determinative, question becomes whether appellants' affidavits place this fact in issue. Resolution of this question necessitates an examination of whether such affidavits, although not placing appellants' state of mind squarely in issue, nevertheless imply the conduct required under *Whitley*. That is, could "a fair-minded

jury . . . return a verdict for [appellants] on the evidence presented." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 252.

We are aware that state of mind is typically not a proper issue for resolution on summary judgment. See 10A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2730 (1983); *Archer v. Dutcher*, 733 F.2d 14 (2d Cir. 1984); *Slay v. Alabama*, 636 F.2d 1045, *reh'g denied*, 642 F.2d 1210 (5th Cir. 1981). Appellees contend, however, that the appellants' failure to present any evidence directly refuting appellees statements suggesting affirmative efforts to maintain habitable conditions at HCF demonstrates that no genuine issue of fact exists regarding these efforts. Moreover, appellees assert that such efforts evidence a lack of the requisite "obduracy and wantonness" necessary for an eighth amendment claim.

Appellees' argument, although logically attractive, ignores the well-established principle that upon a motion for summary judgment, all reasonable inferences from underlying facts must be drawn in the nonmovant's favor. *United States v. Diebold, Inc.*, 369 U.S. 654 (1962). Furthermore, "[i]nasmuch as a determination of someone's state of mind usually entails the drawing of factual inferences as to which reasonable men might differ - a function traditionally left to the jury - summary judgment often will be an inappropriate means of resolving an issue of this character." Wright, Miller & Kane, *supra*, at § 2730, p. 238 (footnote omitted). The question we must address, therefore, is whether the appellants' affidavits, while not directly contradicting the appellees' affidavits, nevertheless contain facts reasonably implying that the appellees acted with obduracy and wantonness.

Importantly, the appellants do not contend that the appellees have taken no efforts to provide them with minimally decent confinement conditions. Rather, appellants' complaints are aimed at the results of those efforts. The undisputed record indicates that the HCF unit manager has adopted specific affirmative measures to reduce noise levels, has had heaters serviced, provides inmates with an extra blanket during winter months, has installed exhaust fans for improved ventilation, requires the cleaning of lavatories and kitchen on a daily basis, and has contracted with an exterminator to treat HCF for pests on a twice-monthly basis. The appellants' position, apparently, is that despite these actions, prison conditions remain unacceptable.

Rhodes and its progeny make clear that confinement conditions may constitute cruel and unusual punishment only if such conditions "compose the punishment at issue." 452 U.S. at 347. Nothing in the appellants' affidavits implies that the appellees used confinement conditions to punish the appellants. To the contrary, the evidence shows action on the appellees' behalf to maintain decent conditions at HCF. Additionally, the *Whitley* standard of obduracy and wantonness requires behavior marked by persistent malicious cruelty. The record before us simply fails to assert facts suggesting such behavior. At best, appellants' claim evidences negligence on appellees' parts in implementing standards for maintaining conditions. Negligence, clearly, is inadequate to support an eighth amendment claim. See *Birrell, supra*, at 958.

V.

In conclusion, we find that appellants' allegations regarding inadequate cooling, housing with mentally ill inmates, and overcrowding are insufficient to provide a specific basis for an eighth amendment violation. Additionally, we find that appellants' affidavits, in that they fail to raise a reasonable inference of obduracy and wantonness on the appellees' behalf, present no genuine issue as to that material fact. Thus, we hold that the district court properly entered summary judgment in appellees' favor, and therefore AFFIRM.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 88-3194

PEARLY WILSON and EVERETT HUNT, JR.,
Plaintiffs-Appellants,
v.

RICHARD SEITER and CARL HUMPHREYS,
Defendants-Appellees.

Before: KRUPANSKY and WELLFORD, Circuit Judges;
and HARVEY, Senior District Judge.

JUDGMENT

ON APPEAL from the United States District Court
for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from
the said district court and was submitted on briefs with-
out oral argument.

ON CONSIDERATION WHEREOF, It is now here
ordered and adjudged by this court that the judgment of
the said district court in this case be and the same is
hereby affirmed.

No costs taxed.

January 16, 1990

ENTERED BY ORDER OF THE
COURT

Leonard Green, Clerk
/s/ Leonard Green
Clerk

SUPREME COURT OF THE UNITED STATES

No. 89-7376

Pearly L. Wilson,

Petitioner

v.

Richard Seiter, et al.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit.

ON CONSIDERATION of the motion for leave to proceed
herein in forma pauperis and of the petition for writ of
certiorari, it is ordered by this Court that the motion to
proceed in forma pauperis be, and the same is hereby,
granted; and that the petition for writ of certiorari be, and
the same is hereby, granted.

October 1, 1990
